

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Diona M. Gildon.

Plaintiff,

vs.

Social Security.

Defendant.

CASE NO. 08-CV-1564 H (NLS)

**ORDER GRANTING MOTION
TO PROCEED IN FORMA
PAUPERIS AND DENYING
WITHOUT PREJUDICE
PLAINTIFF'S MOTION TO
APPOINT COUNSEL**

On August 25, 2008, plaintiff Dionna M. Gildon filed a complaint alleging the denial of Social Security benefits. (Doc. No. 1.) Plaintiff has filed a motion for leave to proceed in forma pauperis and a motion to appoint counsel. (Doc. Nos. 2-3.) For the reasons that follow, the Court grants Plaintiff's motion to proceed in forma pauperis and denies without prejudice Plaintiff's motion to appoint counsel.

Motion to Proceed In Forma Pauperis

Under 28 U.S.C. § 1915(a), a court may authorize the commencement of a lawsuit without payment of the required filing fee if the plaintiff submits an affidavit demonstrating the plaintiff's inability to pay the filing fee. Such affidavit must include a complete statement of the plaintiff's assets. Here, Plaintiff has submitted a form motion and declaration. (See Doc. No. 2.) Plaintiff declares that she has been unemployed since January 10, 1998 and receives monthly social security and welfare benefits. (Id.) Plaintiff does not have a checking account or other bank account and does not own an automobile. (Id.) Plaintiff's son, daughter

1 and grandson depend upon Plaintiff for their support. (*Id.*) After reviewing Plaintiff's filing,
2 the Court concludes that Plaintiff has established that she cannot pay the filing fee.
3 Accordingly, the Court grants Plaintiff's motion to proceed in forma pauperis.

Motion to Appoint Counsel

The Constitution provides no right to appointment of counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. Lassiter v. Dept. of Social Services, 452 U.S. 18, 25 (1981). Under 28 U.S.C. § 1915(e)(1), however, district courts are granted discretion to appoint counsel for indigent persons under “exceptional circumstances.” Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires an evaluation of both the ‘likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved.’ Neither of these issues is dispositive and both must be viewed together before reaching a decision.”” *Id.* (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)).

15 Plaintiff filed her motion to appoint counsel using a form motion intended for
16 employment discrimination actions under the Civil Rights Act of 1964 and 42 U.S.C. § 2000e.
17 (Doc. No. 3.) After reviewing Plaintiff's submission and considering all the circumstances of
18 this case based on Plaintiff's filings to date, the Court concludes that Plaintiff's motion fails
19 to establish the "exceptional circumstances" required for the Court to appoint counsel.
20 Plaintiff has been able to articulate the basis of her claim and has succeeded in her IFP
21 application. Accordingly, the Court denies Plaintiff's motion for appointment of counsel
22 without prejudice.

23 || IT IS SO ORDERED.

24 || DATED: September 3, 2008

Marilyn L. Huff
MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT